EASEMENTS — MODES OF ACQUISITION — IMPLIED GRANT OF RIGHT OF WAY. — Four adjoining houses and lots were sold by the owner at auction. Across the rear of each lot, but included within its boundaries in the respective deeds, was a twelve-foot strip of land, lying between the garden wall and the boundary hedge, the upper end walled, the lower abutting on the highway. The strip was hard from years of use by the former tenants, and showed tracks leading to gates in the garden walls. The plaintiff, purchaser of the lot which included the open end of the strip, resists the claim of the other purchasers to a right of way over it. *Held*, that they have a right of way by implied grant. *Hansford* v. *Jago*, [1921] 1 Ch. 322.

The weight of authority upholds this case in applying the rules of implied grant, not implied reservation, to simultaneous transfers. *Baker* v. *Rice*, 56 Ohio St. 463, 47 N. E. 653; *Stephens* v. *Boyd*, 157 Ia. 570, 138 N. W. 389. *Contra, Whyte* v. *Builders' League*, 164 N. Y. 429, 58 N. E. 517. See 14 HARV. L. REV. 466. See WASHBURN, EASEMENTS, 4 ed., 105. A way in *de facto* use was originally held not sufficiently continuous and apparent to pass by implied grant. *Morgan* v. *Meuth*, 60 Mich. 238, 27 N. W. 509; *Parsons* v. *Johnson*, 68 N. Y. 62. Many jurisdictions consider this objection removed where there is a paved or constructed way. *Brown* v. *Alabaster*, 37 Ch. Div. 490; *Gorton-Pew Fisheries Co.* v. *Tolman*, 210 Mass. 402, 97 N. E. 54. See WASHBURN, EASEMENTS, 4 ed., 107. Since there was no pavement or construction in the principal case, it marks a step toward further leniency, which has not generally been taken in the United States. *O'Rorke* v. *Smith*, 11 R. I. 259. But the fact that the way was delimited by fence and hedge makes the step easy. See *Phillips* v. *Phillips*, 48 Pa. St. 178. It is doubtful, however, if any extension of the doctrine of implied grant of easements is desirable, in view of the strong policy underlying the Statute of Frauds and the parol evidence rule and, in the United States, the registry system. See *Buss* v. *Dyer*, 125 Mass. 287, 291; *Warren* v. *Blake*, 54 Me. 276, 289; *Dodd* v. *Burchell*, 1 H. & C. 113, 120. The decision of the principal case may be supported upon alternative grounds stated by the court.

ELECTION OF REMEDIES — INCONSISTENCY — REMEDIES AGAINST CARRIER AND CONSIGNEE. — The plaintiffs delivered goods to the defendants to be forwarded as the plaintiffs should direct. The goods were consigned to one Beilin, but the plaintiffs later directed the defendants not to deliver them to Beilin. The defendants notwithstanding delivered the goods to him. The plaintiffs sued Beilin for goods sold and delivered, and recovered judgment. Being unable to satisfy the judgment they now sue the defendants for negligence and breach of duty. *Held*, that a judgment for the defendants be affirmed. *Verschures Creameries* v. *Hull & Netherlands Steamship Co.*, [1921] 2 K. B. 608 (C. A.).

Where a plaintiff has two inconsistent remedial rights, the assertion of one of them by an unequivocal act is treated as a binding election, and precludes resort to the other. Jurisdictions differ as to what acts are necessary, but in any jurisdiction proceeding to judgment would be sufficient. *Stewart* v. *Salisbury Realty & Ins. Co.*, 159 N. C. 230, 74 S. E. 736; *Droege* v. *Ahrens & Ott Mfg. Co.*, 163 N. Y. 466, 57 N. E. 747; *Terry* v. *Munger*, 121 N. Y. 161, 24 N. E. 272; *Scarf* v. *Jardine*, 7 A. C. 345. But see *Rice* v. *Reed*, [1900] 1 Q. B. 54; *Morris* v. *Robinson*, 3 B. & C. 196. See Walter Hussey Griffith, "Election between Alternative Remedies," 16 LAW QUART. REV. 160. Nevertheless the principal case seems wrong. The doctrine of election of remedies is founded on the logical repugnancy involved in the plaintiff's conduct. To make the doctrine applicable, the remedies must therefore be inconsistent. *Reynolds* v. *Union Station Bank of St. Louis*, 198 Mo. App. 323, 200 S. W. 711. See *American Process Co.* v. *Florida White Pressed Brick Co.*, 56 Fla. 116, 122–123,

47 So. 942, 944. There is no inconsistency in the remedies which the plaintiffs here are pursuing. It is true that in suing Beilin they acknowledge that he has title. But this does not necessarily involve an admission that the defendants' delivery in violation of instructions was not a breach of duty. *Cf. Pacific Vinegar & Pickle Works* v. *Smith*, 152 Cal. 507, 93 Pac. 85; *Robinson Machine Works* v. *Vorse*, 52 Iowa, 207, 2 N. W. 1108. An erroneous application of the doctrine of election is particularly to be regretted, because the doctrine, at best, is a sacrifice of justice to technical perfection. See Charles P. Hine, "Election of Remedies, A Criticism," 26 HARV. L. REV. 707.

EMINENT DOMAIN — POWER OF ONE STATE TO CONDEMN LAND IN ANOTHER. — The plaintiff was a Wisconsin corporation supplying the defendant city in Wisconsin with water. A small but highly important part of its plant was land and an intake main in Minnesota, in which state, however, it performed no public service. Its franchises were held under a Wisconsin statute which gave to any municipality the right to acquire by condemnation any such public utility. The plaintiff sues to enjoin such condemnation proceedings by the defendant in so far as they relate to the property in Minnesota. *Held*, that a demurrer to the complaint be sustained. *Superior Water, etc. Co.* v. *City of Superior*, 183 N. W. 254 (Wis.).

It is true that the United States may condemn land within a state. *Kohl* v. *United States*, 91 U. S. 367. But no state can condemn property in another state. *Crosby* v. *Hanover*, 36 N. H. 404. See NICHOLS, EMINENT DOMAIN, 2 ed., § 28. Nor could Minnesota have allowed the defendant to take the property involved in this case by eminent domain. for a state may not authorize condemnation for purposes which do not substantially benefit its own public interest and welfare. *Grover Irr. & Land Co.* v. *Lovella Ditch, etc. Co.*, 21 Wyo. 204, 131 Pac. 43. *Cf. Gilmer* v. *Lime Point*, 18 Cal. 229; *Trombley* v. *Humphrey*, 23 Mich. 471; *Petition of United States*, 96 N. Y. 227. See Charles N. Gregory, "Expropriation by International Arbitration," 21 HARV. L. REV. 23, 26–27. Under the above authorities, the first ground of decision in the principal case is clearly wrong. It is argued that the property devoted to the franchise is merged in it, is personalty, and therefore is subject to the jurisdiction of Wisconsin. It may be that the whole plant and franchise is properly taxable as a unit and as personalty. *Town of Washburn* v. *Washburn Waterworks Co.*, 120 Wis. 575, 98 N. W. 539. And even that the foreign land may be included for this purpose. *Cf. Vanuxem's Estate*, 212 Pa. St. 315, 61 Atl. 876. But such a fiction is flagrantly abused if by means of it a court claims jurisdiction to operate *in rem* on land in another state. See *Lynde* v. *Columbus, etc. Ry. Co.*, 57 Fed. 993 (Circ. Ct., D. Ind.). If the principal case can be supported, it must be on the second ground of the court's decision: that the acceptance of the franchise under the statute gave rise to a specifically enforceable contract to convey in aid of condemnation proceedings all property devoted to the franchise.

EQUITY — SPECIFIC PERFORMANCE — FRAUD OF A THIRD PARTY AS A DEFENSE. — Through the fraudulent representations of the defendants' agent as to collateral facts, the defendants were induced to agree to sell land to the plaintiff for less than its then market value. The plaintiff was wholly innocent. But the defendants notified him as soon as they discovered the fraud, and tendered him back the sum already paid on account. This the plaintiff refused and brought this bill for specific performance. *Held*, that the bill be dismissed. *Levin* v. *Atchison*, 69 PITTS. L. J. 385.

There is little direct authority upon the point, although the holding of the case has been predicted by an eminent author. See FRY, SPECIFIC PERFORMANCE, 4 ed., §§ 728, 729. A contract cannot be set aside for the fraud